

Respondent asserts that claimant failed to prove by a preponderance of the credible evidence that her need for post-award medical treatment to her left knee or low back is a natural and probable consequence of her original injury. Respondent asks the Board to reverse the ALJ's Post Award Medical Order.

Claimant argues that her preexisting back and knee conditions were aggravated by her work injury and, therefore, those medical conditions are compensable. Accordingly, claimant asks that the ALJ's Post Award Medical Order be affirmed.

The issue for the Board's review is: Did claimant prove that her need for post-award medical treatment to her left knee and/or low back is a natural and probable consequence of her original injury?

FINDINGS OF FACT

Claimant worked for respondent as a receptionist. On April 11, 2007, she fell at work and broke her left hip. She was treated by Dr. Eyster, who performed surgery to replace her left hip on April 12, 2007. She testified she now walks with a limp and has developed problems with her low back and left knee, which she relates to her left hip injury and hip replacement surgery.

Claimant testified that prior to her accident, she had been treated by her family physician, Dr. Carro, for rheumatoid arthritis. She stated she had been taking medication for rheumatoid arthritis. She said Dr. Carro had also referred her to Dr. Shaver for injections in one of her knees.¹ In September 2006, Dr. Carro suggested that claimant have knee replacement surgery. Claimant did not have the suggested surgery.

Dr. Robert Eyster, a board certified orthopedic surgeon, was authorized to treat claimant for her work-related fractured hip. He first saw her on April 11, 2007, and performed left hip replacement surgery on April 12. Dr. Eyster testified that at the time of her initial injury, claimant was not having any symptoms or complaints involving her left lower extremity or her low back. The treatment which he provided after the April 11, 2007, injury was limited to her left hip. She had a good result from the surgery. He released her from treatment and found she was at maximum medical improvement on June 11, 2007. At that time, claimant did not have a significant limp.

After her left hip replacement surgery, claimant was seen by Dr. Pedro Murati on July 11, 2007, at the request of her attorney. According to Dr. Murati's report, claimant complained of pain, numbness and stiffness in her left hip. Claimant testified, however, she also told Dr. Murati that she had a limp and that she had pain in her back and left hip. She did not tell Dr. Murati she was having problems with either of her knees. Dr. Murati, however, only diagnosed and rated her left hip.

In September 2007, claimant's workers compensation claim was settled under an Agreed Award based on a 17.5 percent permanent partial impairment to the whole body

¹ She did not indicate which knee received the injections.

on a compromise of all issues. Future medical benefits and review and modification were left open. Claimant filed an Application for Review and Modification in January 2010, and an Agreed Award on Review and Modification was filed on May 27, 2010, finding she was entitled to a work disability and holding that she had a 66 percent permanent partial general bodily disability.

In December 2007, claimant returned to Dr. Eyster for treatment to her knees. She continued to follow up with Dr. Eyster for her knee problems, and then, in August 2010, complained about her lower back. In regard to claimant's low back, Dr. Eyster said she had degenerative disc narrowing with involvement of two discs of the lower lumbar area, L4-5 and L5-S1. He is treating her conservatively with anti-inflammatory medication and reduction of forward bending and lifting, as well as some mild stretching. In the event conservative treatment is not effective, Dr. Eyster said he would discuss surgery with claimant, which would involve a fusion of the lower lumbar region. At the time of his deposition in December 2010, however, Dr. Eyster had not considered surgery.

Dr. Eyster also treated claimant for problems with her knees. He said that claimant has a significant degenerative knee situation with the medial compartment starting to lose some of its articular cartilage. He stated that claimant is a candidate for a trial of injections and possibly total knee replacement if symptoms persist and cannot be controlled with conservative treatment.

Dr. Eyster, in setting out his opinion on the relationship between claimant's work-related injury and her lower back and left knee symptoms, stated:

Well, I opined that day that the fact that she had had the—the injury, that certainly there was some contribution to the pain syndrome of her lower back and her knee. I wasn't in a position to indicate to what extent and I didn't compare it necessarily to other factors that are contributing. You [claimant's attorney] had asked whether there was a possible contribution, and I essentially was responding, saying yes, there was some contribution.²

In further explaining Dr. Eyster's opinion regarding the contribution of the work-related injury to claimant's low back and hip condition, he testified that the work-related accident contributed to the low back and knee symptoms, but not the disease process.

Q. [by Respondent's Attorney] All right. Is the back condition a natural and probable consequence of the hip injury and the resulting treatment?

A. [by Dr. Eyster] No.

Q. Are the symptoms in the back a natural and probable consequence of the hip injury and the resulting treatment?

² Eyster Depo. at 9.

A. No.

Q. Okay. Is the knee condition a natural and probable consequence of the hip injury and the resulting treatment to the hip?

A. No.

Q. Are the symptoms in the knee a natural and probable consequence of the hip injury and the resulting treatment to the hip?

A. No.³

In a letter of September 23, 2010, to claimant's attorney, Dr. Eyster stated: "It would be my opinion in summary that the lower back and knee certainly were aggravated to some extent by the injury that resulted in a total [hip] with the degenerative change of the discs in the lower back as a diagnosis and cartilage irritation in the knee."⁴ In Dr. Eyster's deposition, claimant's attorney asked:

Q. And you're not saying in that sentence that the accident that resulted in the total hip may have caused aggravation to the lower back and knee. You're saying that it caused some aggravation, you just can't say to what extent, whether it's a small or a large portion; is that correct?

A. [by Dr. Eyster] I am saying that there is a contribution on the symptoms, and I'll stick by that.⁵

PRINCIPLES OF LAW

In claimant's request for post-award medical treatment, she has the burden to prove her right to an award of compensation and prove the various conditions on which her right depends.⁶

K.S.A. 2010 Supp. 44-510k(a) states:

At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523 and amendments thereto. The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying

³ Eyster Depo. at 13-14.

⁴ Eyster Depo., Cl. Ex. 2 at 1.

⁵ Eyster Depo. at 15.

⁶ K.S.A. 2010 Supp. 44-501(a).

award. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551 and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556 and amendments thereto.

In *Logsdon*,⁷ the Kansas Court of Appeals held:

Whether an injury is a natural and probable result of previous injuries is generally a fact question.

When a primary injury under the Worker's Compensation Act is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

ANALYSIS

Claimant suffered a compensable injury to her left hip at work with respondent on April 11, 2007. She received authorized treatment from Dr. Eyster, which included hip replacement surgery. Sometime thereafter, claimant began to walk with an altered gait and developed problems with her low back and left knee. Claimant had preexisting rheumatoid arthritis, which included bilateral knee problems. Her family physician had recommended she consider knee replacement surgery even before her fall at work in April 2007. It is not clear from this record for which knee Dr. Carro had recommended that treatment, but at least one knee was injected by Dr. Shaver before the work-related injury. The testimony of Dr. Eyster is that claimant did not report having any low back or left knee problems at the time of her work-related injury. Furthermore, at the time he released her after surgery, claimant did not have a significant limp. Shortly thereafter, however, claimant did report having a limp to Dr. Murati. She also reported hip and back pain. She did not report knee pain or knee symptoms.

Claimant returned to Dr. Eyster in December 2007 for treatment of both knees. Later, she complained about her low back. Dr. Eyster opined that there is "some contribution"⁸ from the original hip injury to the low back and knee conditions. Dr. Eyster said that the back and knee symptoms were aggravated by the original accident and resulting hip injury. He did not believe the claimant's degenerative knee and back conditions were a natural and probable consequence of the hip injury.

⁷ *Logsdon v. Boeing Company*, 35 Kan. App. 2d 79, Syl. ¶¶ 1, 2, 128 P.3d 430 (2006); see also *Leitzke v. Tru-Circle Aerospace*, No. 98,463, unpublished Court of Appeals opinion filed June 6, 2008.

⁸ Eyster Depo. at 9.

The ALJ determined claimant's low back and left knee problems to be compensable and ordered respondent to provide treatment. Respondent argues that the record fails to prove the claimant's back and knee conditions were either injured by the fall at work in April 2007 or occurred as a direct and natural consequence of that accident and the resulting hip injury. Respondent points to the fact that claimant was diagnosed with rheumatoid arthritis and had bilateral knee problems before her accident. Moreover, her personal physician had recommended or suggested she consider a total knee replacement (although it is not certain that this recommendation was for the left knee). Respondent also argues that it is just as likely, if not more likely, that claimant's altered gait is the result of the natural progression of claimant's preexisting knee problems as it is that it is due to the hip replacement.

Dr. Eyster is the only physician who testified concerning claimant's current condition and need for treatment. He would not say that claimant's current back and knee problems are the natural and probable consequence of the hip injury, but he did opine "that the lower back and knee certainly were aggravated to some extent by the injury."⁹ He related the claimant's symptoms to the injury. It is because of those symptoms that claimant is now seeking treatment.

Nevertheless, absent evidence that claimant's underlying knee and back conditions were aggravated by the accident or the natural consequence of the hip injury, as opposed to only the symptoms, those conditions are not compensable.¹⁰

CONCLUSION

Claimant has failed to prove that her current knee and back conditions are the direct and natural consequence of her work injury. Accordingly, the order authorizing treatment for those conditions is reversed. The ALJ's order for attorney fees, however, is not a part of this appeal and remains in full force and effect.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post Award Medical Order of Administrative Law Judge John D. Clark dated February 24, 2011, is affirmed as to the award of attorney fees, but the order authorizing treatment for claimant's left knee and low back with Dr. Eyster is reversed.

IT IS SO ORDERED.

⁹ Eyster Depo., Cl. Ex. 2 at 1.

¹⁰ *Martin v. CNH America LLC*, 40 Kan. App. 2d 342, 195 P.3d 771 (2007).

Dated this _____ day of April, 2011.

BOARD MEMBER

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DISSENT

This Board Member respectfully dissents from the majority's decision to deny claimant the medical treatment to her low back and knee. The majority's opinion acknowledges the long standing rule that when a primary injury is found compensable, then every natural consequence that flows from that injury is compensable as well, if it is deemed to be the direct and natural result of the primary injury. K.S.A. 2010 Supp. 44-510h(a) requires that employers provide such medical treatment as is "reasonably necessary to cure and relieve the employee from the effects of the injury." The case law interpreting this language has consistently found that the statute contemplates the employer being responsible for all treatment which relieves the employee's symptoms, arising from the injury.¹¹

Although Dr. Eyster is somewhat equivocal, he has nonetheless opined that claimant's back and knee conditions were aggravated to some extent by the original accident. Admittedly, claimant had been previously diagnosed with rheumatoid arthritis and had bilateral knee problems before her accident. But the medical testimony in this record supports her contention that she is entitled to medical treatment to treat the

¹¹ See *Carr v. Unit No. 8169*, 237 Kan. 660, 703 P.2d 751 (1985); *Horn v. Elm Branch Coal Co.*, 141 Kan. 518, 41 P.2d 751 (1935).

aggravation of her symptoms. For this reason, I would affirm the ALJ's Post Award Medical Order.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
P. Kelly Donley, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge